

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the Matter of	)	
	)	
Assessment and Collection of Regulatory Fees	)	MD Docket No. 17-134
for Fiscal Year 2017	)	

**REPLY COMMENTS OF THE SUBMARINE CABLE COALITION**

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## **TABLE OF CONTENTS**

I.	INTRODUCTION AND SUMMARY .....	1
II.	THE COMMISSION SHOULD ADOPT A FLAT FEE FOR ALL INTERNATIONAL 214 LICENSES .....	3
A.	A FLAT FEE ON INTERNATIONAL SECTION 214 LICENSES WOULD BE MORE EFFICIENT, EQUITABLE, AND LESS BURDENSOME.....	3
B.	AN ASSESSMENT ON ALL SECTION 214 LICENSES IS CONSISTENT WITH THE STATUTE.....	4
C.	OTHER OBJECTIONS TO A SECTION 214 FLAT FEE LACK MERIT .....	6
1.	<i>Resellers.</i> .....	6
2.	<i>Private Cables.</i> .....	7
3.	<i>Multiple Licenses.</i> .....	8
III.	CONCLUSION .....	10

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The Submarine Cable Coalition (“Coalition”), composed of Cedar Cable Ltd., Cable & Wireless Networks, GlobeNet Cabos Submarinos America, Inc., GU Holdings Inc. and Servizio di Telecomunicazioni di Aruba N.V. (“SETAR”), respectfully submits these reply comments in response to the Commission’s Report and Order and Further Notice of Proposed Rulemaking<sup>1</sup> and comments in the record addressing the assessment and collection of regulatory fees for fiscal year 2017.<sup>2</sup>

**I. Introduction and Summary**

The members of the Coalition are a diverse group of international communications providers whose services include providing submarine cable capacity. These companies deploy submarine cables first to meet their internal communications capacity requirements and, in addition, where excess capacity exists, some of the members provide a diverse array of services to other carriers and customers, including, international traffic services, private line services, and enterprise services including MPLS and VPN and where spare fiber exists, dark fiber. The

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<sup>1</sup> *Assessment and Collection of Regulatory Fees for Fiscal Year 2017*, Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd. 7057, 7074-75 (2017) (“*FY 2017 Order and FNPRM*”).

<sup>2</sup> See Comments of CTIA-The Wireless Association, MD Docket No. 17-134 (filed Dec. 1, 2017); Comments of Level 3 Communications, MD Docket NO. 17-134 (filed Dec. 1, 2017); Comments of Satellite Industry Association, MD Docket No. 17-134 (filed Dec. 1, 2017).

companies that comprise the Coalition are:

- Cedar Cable, Ltd. is an affiliate of Atlantic Tele-Network, Inc. and is the facilities-based operator of the CB-1 cable system connecting the United States and Bermuda. The CB-1 cable system is also used by other Bermuda based carriers and enterprise customers.
- Through its affiliates, Cable & Wireless Networks operates the ARCOS-1, CFX-1, PCCS and Gemini-Bermuda submarine cable systems linking the United States and multiple countries in the Caribbean, and Central and South America. Cable & Wireless Networks offers broadband and IP services to carriers, Internet service providers, cable operators, network integrators and others.
- GlobeNet Cabos Submarinos America, Inc. operates a high capacity submarine cable system between the United States, Bermuda, Brazil, Colombia and Venezuela. GlobeNet Cabos Submarinos America, Inc. also provides capacity for other carrier and enterprise customers.
- GU Holdings Inc. (“GU Holdings”) is a subsidiary of Google LLC. Currently, GU Holdings is the licensed United States landing party for (1) the Unity Cable System connecting Japan and the United States; (2) the FASTER Cable System connecting Japan, Taiwan, and the United States; and (3) the Monet Cable System connecting Brazil and the United States.<sup>3</sup>
- SETAR is the incumbent telecommunications provider of Aruba and a member of the consortium operating the Pacific Caribbean Cable System connecting the United States with several destinations in the Americas. SETAR also holds minority interests in other cables in the United States.

As explained in its comments filed in response to the Commission’s annual fee notice,<sup>4</sup> the Coalition believes that the Commission’s ever-increasing regulatory fees for submarine cables disproportionately burden submarine cables given historical trends, the limited services and benefits provided, and fees paid by other service providers, such as international Section 214 holders who do not operate submarine cables or other international bearer circuits, and thus

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<sup>3</sup> GU Holdings is also an applicant for a submarine cable landing license for the Pacific Light Cable Network connecting the United States to Hong Kong, Taiwan and the Philippines, File Number SCL-LIC-20170421-00012.

<sup>4</sup> *Assessment and Collection of Regulatory Fees for Fiscal Year 2017*, Notice of Proposed Rulemaking, 32 FCC Rcd. 4526 (2017) (“FY 2017 NPRM”).

effectively pay no regulatory fees at all.<sup>5</sup> Adopting a flat fee for all holders of international Section 214 authorizations provides an efficient and far more equitable mechanism for assessing and collecting regulatory fees for international providers.

## **II. The Commission Should Adopt a Flat Fee for all International 214 Licenses**

### **A. A Flat Fee on International Section 214 Licenses Would be More Efficient, Equitable, and Less Burdensome**

Among other things, the *FY 2017 Order and FNPRM* seeks comment regarding the Coalition’s proposal that the Commission “adopt a regulatory fee for all holders of Section 214 international authorizations.”<sup>6</sup> As the Satellite Industry Association (“SIA”) states in its comments, assessing a fee on international Section 214 authorizations has “distinct advantages over both the existing system” and the alternative reform proposal regarding a “tiered approach.”<sup>7</sup> The Coalition agrees with SIA that a flat fee approach for international Section 214 licensees “would ensure a consistent link between regulatory fees and the drivers of regulatory costs, while reducing the administrative burden.”<sup>8</sup>

The Coalition generally agrees with the proposal in the FNPRM to revise the existing tiers for submarine cable system regulatory fees.<sup>9</sup> The existing tiers are no longer relevant, since as the FNPRM states, all but two systems are in the highest tier.<sup>10</sup> However, this proposal still falls short of the mark, because it does nothing to reduce the overall size of the fee assessments

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<sup>5</sup> Comments of the Submarine Cable Coalition, MD Docket No. 17-134, at 2 (filed June 22, 2017).

<sup>6</sup> *FY 2017 Order and FNPRM*, 32 FCC Rcd. at 7074, ¶ 44.

<sup>7</sup> Comments of SIA at 6.

<sup>8</sup> *Id.*

<sup>9</sup> *FY 2017 Order and FNPRM*, 32 FCC Rcd. at 7074, ¶ 46.

<sup>10</sup> *Id.*

on submarine cable systems that pay fees that bear no rational relationship with “the benefits provided to the payor of the fee.”<sup>11</sup> It is far more equitable and rational for the Commission to expand the contribution base for its regulatory activities rather than imposing fees that disproportionately burden one segment of the industry that is only nominally regulated.

As noted below, arguments against the Coalition’s proposal are not persuasive and the Coalition continues to believe that a flat fee per international Section 214 license would (i) be “competitively neutral [and] easy to administer;”<sup>12</sup> (ii) be less burdensome as far as recordkeeping; (iii) be most equitable to all recipients of International Bureau services identified by the Commission; and (iv) improve overall compliance with the Commission’s fee collection goals. As such, the Coalition urges the Commission to adopt a flat fee per international Section 214 license.

**B. An Assessment on All Section 214 Licenses is Consistent with the Statute**

CTIA argues that the Coalition’s proposal is impermissible under Section 9(b)(3) of the Act because that provision allows amendments “only in response to changes in law and regulation that, in turn, change the relationship between a particular category of regulatees and the staff-hours spent regulating them.”<sup>13</sup> This is an overly restrictive reading of the Act. Section 9(b)(3) permits amendments where the Commission “determines that the Schedule requires amendment to comply with the requirements of paragraph (1)(A)”<sup>14</sup> which, in turn, requires that the fees be “reasonably related to the benefits provided to the payor of the fee by the

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<sup>11</sup> 47 U.S.C. § 159(b)(1)(A).

<sup>12</sup> *See Assessment and Collection of Regulatory Fees for Fiscal Year 2008*, Second Report and Order, 24 FCC Rcd. 4208, 4212, ¶ 7 (2009) (“*Submarine Cable Order*”).

<sup>13</sup> Comments of CTIA at 2.

<sup>14</sup> 47 U.S.C. § 159(b)(3).

Commission’s activities.”<sup>15</sup> The statute also allows the Commission to “add, delete, or reclassify services in the Schedule to reflect additions, deletions, or changes in the nature of its services as a consequence of Commission rulemaking proceedings.”<sup>16</sup> To the extent the relationship between a sector of the industry and the Commission’s regulation evolves over time, the Commission plainly can – indeed it must – revise its fee collection regime accordingly.

CTIA effectively argues that, once the Commission establishes a regulatory fee regime, it cannot be amended to reflect changes in the marketplace, technology or regulation. The Commission should reject such an overly restrictive reading of the broad authority it has under the statute to administer the collection of regulatory fees.

The Commission acknowledges, and certain commenters agree, that the mechanism for assessing regulatory fees is broken and that the fees paid are no longer related to the regulatory benefits flowing to the payors.<sup>17</sup> The Commission further acknowledges that the “international services marketplace has continued to evolve” and has sought to modify its fee structure to keep pace with these changes in order for the Commission’s fee assessments to be “more efficient, equitable, and less burdensome.”<sup>18</sup>

The *FY2017 Fee Order* explained the broad functions supported by the regulatory fees paid by submarine cable systems, none of which functions appear unique to submarine cable systems. The Order found that the submarine cable system regulatory fees support the

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<sup>15</sup> 47 U.S.C. § 159(b)(1)(A).

<sup>16</sup> 47 U.S.C. § 159(b)(3).

<sup>17</sup> See *FY 2017 Order and FNPRM*, 32 FCC Rcd. at 7130 (Statement of Commissioner Michael O’Rielly) (expressing concern regarding the Commission’s assessment of regulatory fees associated with Wireline Bureau activities on broadcasters and submarine cable authorization holders); Comments of SIA at 2-3 (noting the disparity between the Commission’s regulatory costs and regulatory fee assessments associated with satellite IBCs in light of the elimination of the requirement to file circuit status reports).

<sup>18</sup> *FY 2017 FNPRM*, 32 FCC Rcd. at 4537 ¶ 24.

International Bureau’s provision “of many services on behalf of common carriers using submarine cable circuits, such as benchmarks enforcement, protection from anticompetitive actions by foreign carriers, section 310(b) foreign ownership rulings, international Section 214 authorizations, and representation of U.S. interests at bilateral and multilateral negotiations and international organizations.”<sup>19</sup> These functions, however, do not solely benefit submarine cable systems. They apply equally to all international Section 214 holders, satellite service providers and all Commission regulatees in general.

Indeed, collecting regulatory fees from all international Section 214 licensees, on a per license basis, is most consistent with the Act. The Act requires that the Commission “assess and collect regulatory fees to recover the costs of [its] ... regulatory activities”<sup>20</sup> in a manner so that fees “are reasonably related to the *benefits provided to the payor of the fee*.”<sup>21</sup> The current system of collecting disproportionate fees from submarine cable licenses instead of the nearly 7,000 international Section 214 licensees who also benefit from International Bureau regulatory activity cannot be squared with the statute.

### **C. Other Objections to a Section 214 Flat Fee Lack Merit**

#### **1. Resellers.**

Some commenters object to assessing regulatory fees on resellers, without clearly articulating why such regulated entities should be exempt.<sup>22</sup> The burden of paying for the purported regulatory functions identified in the *FY2017 Fee Order*,<sup>23</sup> should be borne by all recipients of the benefits, not just those that own facilities. None of the listed functions benefit

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<sup>19</sup> *Id.* at 7070-71, ¶ 31..

<sup>20</sup> 47 U.S.C. §159(a)(1).

<sup>21</sup> 47 U.S.C. § 159(b)(1)(A) (emphasis added).

<sup>22</sup> CTIA Comments at 2.

<sup>23</sup> *FY 2017 Order and FNPRM*, 32 FCC Rcd. at 7070-71, ¶ 31.



facilities-based providers alone. For example, the International Bureau's efforts to protect the open market for US carriers abroad benefits all carriers that currently and may in the future offer international services, and does so without regard to whether the services are facilities-based or resold. The same can be said about benchmark enforcement or representation of U.S. interests before international organizations. The burden of covering these costs should be shared broadly among all carriers that have sought international Section 214 licenses from the Commission.

## **2. *Private Cables.***

Contrary to statements made by some parties, the Coalition does not propose to exempt private carrier submarine cable systems from paying fees.<sup>24</sup> Non-common carrier cables should still be subject to a fee assessment using whatever tier system the Commission determines is rational, including the revised tier proposal in the FNPRM. But the overall fee per unit at each tier should be greatly reduced and more commensurate with the nominal, if any, relationship between a private carrier submarine cable and the Commission's regulatory activities funded by such assessments.

The Commission's fee structure must recognize that many private carriers do not use their submarine cable capacity to provide services to other carriers including common carriers. A private carrier may provide submarine capacity, for example to a financial institution that uses the capacity for connecting its global operations. Other submarine cable operators use their submarine capacity for internal purposes to support their affiliates' global Internet-enabled applications. While there is no dispute that these submarine cable systems should contribute regulatory fees, the Coalition continues to assert that the ever-increasing fees the Commission

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<sup>24</sup> See Comments of Level 3 at 5 (asserting that assessing regulatory fees on international Section 214 license-holders would not capture non-common carriage circuits); Comments of CTIA at 2.

assess on such systems cannot be justified.

Many of the International Bureau's regulatory functions identified in the *FY2017 Fee Order*,<sup>25</sup> do not benefit private carriers, and even fewer functions benefit private carriers that do not provide spare capacity to other carriers. For example, such private carriers receive no benefit from the Bureau's work regarding either "benchmarks enforcement... [or] ... protection from anticompetitive actions by foreign carriers," among others.<sup>26</sup>

In a nutshell, the fees paid by private carrier submarine cable systems are not commensurate with the regulatory benefits received by the payor; and the Commission's most recent justification set forth in ¶ 31 of the *FY2017 Fee Order*, for increasing fees on submarine cable systems,<sup>27</sup> have little if any benefit to many submarine cable systems that are operated on a private carriage basis.

### **3. Multiple Licenses.**

Additional parties suggest that the Commission should decline to broaden the regulatory fee contribution base by assessing a flat fee on international Section 214 licenses because of questions regarding the methodology of such an assessment.<sup>28</sup> CTIA, for example, argues that some companies may hold such licenses, but do not use them; a single company may hold multiple overlapping authorizations; or a carrier may have a single license and its affiliates provide service subject to that authorization under section 63.21(h) of the Commission's rules.<sup>29</sup> CTIA also asserts that inaccuracies in the International Bureau filing system, and the fact that

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<sup>25</sup> *FY 2017 Order and FNPRM*, 32 FCC Rcd. at 7070-71, ¶ 31.

<sup>26</sup> *See id.*

<sup>27</sup> *Id.*

<sup>28</sup> See Level 3 Comments at 5; CTIA Comments at 3-5.

<sup>29</sup> Comments of CTIA at 3-5.

“some Section 214s are route- and service-specific authorizations” make it unclear that the proposed flat fee would be less burdensome or more equitable than the current methodology for calculating IBC regulatory fees.<sup>30</sup>

CTIA’s concerns are without merit. Among other things, companies faced with the prospect of paying regulatory fees for numerous duplicative licenses always have the option of cancelling redundant licenses. Indeed, licensees would have a compelling incentive to do so, thereby reducing the burden on the International Bureau, and the costs incurred overseeing redundant international Section 214 licensees.<sup>31</sup> This will benefit both the FCC International Bureau as well as those carriers by reducing duplicative recordkeeping and reporting, and streamlining the processing of transactions in the future.<sup>32</sup> Since the Coalition proposes an assessment on each license, those entities would not incur additional regulatory fee contributions.

The Coalition asserts that a recurring annual regulatory fee structure that includes a flat fee for every international Section 214 license, of which there are approximately 7,000,<sup>33</sup> will not be burdensome for licensees and will be far more equitable than the current system that disproportionately burdens submarine cable systems that receive little regulatory benefit from the fees they pay. Indeed, the proposed methodology would “be easier for the Commission to

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<sup>30</sup> *Id.* at 5.

<sup>31</sup> To the extent a licensee’s affiliates also provide international service, there is no requirement each entity have its own license; rule 63.21(h) allows such entities to operate pursuant to a single authorization upon notice to the Commission. 47 C.F.R. § 63.21(h). Those entities that have business reasons for retaining separate international Section 214 licenses would pay regulatory fees for each separate license.

<sup>32</sup> 47 C.F.R. § 63.21(h).

<sup>33</sup> See International Bureau FCC international Section 214 Current Authorizations List, [http://licensing.fcc.gov/cgi-bin/ws.exe/prod/ib/forms/reports/swr029b.hts?as\\_subsystem\\_code=ITC/INTERNATIONAL+SECTION+214&column=V\\_SITE\\_ANTENNA\\_FREQ.file\\_numberC/FILE+NUMBER&fstate=1/CURRENT&prepare=](http://licensing.fcc.gov/cgi-bin/ws.exe/prod/ib/forms/reports/swr029b.hts?as_subsystem_code=ITC/INTERNATIONAL+SECTION+214&column=V_SITE_ANTENNA_FREQ.file_numberC/FILE+NUMBER&fstate=1/CURRENT&prepare=)

administer and [for licensees] to comply with.”<sup>34</sup>

The Commission’s current system for collecting regulatory fees is automated, and thus expanding the base to all international Section 214 licenses creates no additional burden. Moreover, many international Section 214 licensees already pay regulatory fees on their domestic Section 214 services and thus the assessment on international 214 licenses is a simple addition of a line item on their Form 159. Further, the Commission has safeguards in place, such as the automatic assessment of a 25% penalty for late payment of fees and the red light system to deny delinquent payors access to the Commission’s regulatory services.

### **III. Conclusion**

The Coalition urges the Commission to adopt a flat fee assessed per international Section 214 licensee, regardless of the capacity they operate, as such an approach would be more consistent with the statute and easier to administer.

Respectfully Submitted,

/s/ *Ulises R. Pin*

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<sup>34</sup> *Submarine Cable Order*, 24 FCC Rcd. at 4213, ¶ 10.